

Response to Office Action mailed Apr. 1, 2005
Serial No. 10/042,955

Att Dkt. No. 113937-002

REMARKS

This Amendment is being filed in response to the Office Action mailed April 1, 2005. The undersigned attorney would like to thank the Examiner for the courtesies and helpful suggestions extended during a telephone interview of April 20, 2005. Applicants respectfully request reconsideration and allowance of the pending claims in the present application in view of the foregoing amendments and remarks below. By this Amendment, Applicants have added claims 61-64. Accordingly, claims 1, 3-8, 10-64 are pending in this Application.

Support for the amendments can be found at pages 4-6 of the Application. Accordingly, these amendments do not add new matter.

The Examiner has rejected claims 16-26 under 35 U.S.C. §112, first paragraph, "as failing to comply with the written description requirement." (OA, pg. 2, ¶ 2) The Examiner has also rejected "claims 1, 3-8 and 10-60 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention." (OA, pg. 3, ¶¶ 4 and 5) The Examiner states: "Claim 1 is unclear in light of claim 16."

While Applicants disagree with the rejection of claim 16, it has canceled claim 16 and has amended claim 17 to depend from claim 1 to expedite the allowance of this Application. Further, in view of the amendments to claims 1 and 17, Applicants submit the differences between these claims is clear. Accordingly, Applicants respectfully request a withdrawal of the rejections under 35 U.S.C. §112, first and second paragraphs.

The Examiner has also made ten separate rejections of the pending claims under 35 U.S.C. §103(a) in paragraphs 8-17 of the Office Action. Each of the first six rejections requires *Mallik* (U.S. Patent No. 6,533,884) as a part of the rejection (OA pgs. 4-5, ¶¶ 8-13). In Applicants' prior filed Reply to Office Action of December 6, 2004, it submitted a Declaration under 37 C.F.R. 1.131 by joint inventor Brent Anderson. Applicants inadvertently failed to attach a Memorandum referred in the Anderson declaration. Further, in paragraphs 9 and 10 of Mr. Anderson's Declaration should refer to paragraph 2 of the memorandum instead of paragraph 8. Applicants have submitted a third Declaration of Brent Anderson correcting these errors as well as averring to a conception date prior to November 10, 1999, with diligence

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thereafter. Accordingly, *Mallik* should be excluded as a reference by virtue of this Declaration. Further, the Examiner cannot rely on *Mallik* in any combination, and, therefore, Applicants respectfully request a withdrawal of the six rejections requiring *Mallik*.

The Examiner has rejected "claims 1, 3-6, 10-20, 22-27, 29, 30, 32-36, 38-41, 43, 48-54, 56-60 under 35 U.S.C. 103 (a) as being unpatentable over *Kristen* (US Patent No. Re 34, 929) in view of *Araki et al.* (WO 00/18836 with EP 1153974 as the English equivalent) as further taken in view of *Mainstone et al.* (US Patent No. 5,006,056). (OA, pg. 5, ¶ 14) Applicants respectfully traverse this rejection.

Kristen discloses a plastic bag for vacuum sealing having two panels. The two panels are each made of at least two layers. The bag is initially formed as a rectangular pouch having three sides sealed and having one open side for filling of the bag. *Kristen* also discloses forming bags from a roll of an open tube where the bag is cut to its desired length and one end is sealed to form a pouch sealed on three sides, and the fourth side is sealed after the pouch has been filled with the material to be contained. Air can be evacuated from the bag by applying suction to the open end with a nozzle 12 from a vacuum pump inserted into its open end (FIG. 1). After air is evacuated from the pouch the open end is heat sealed to maintain the chamber of the bag in an evacuated state.

The bag of *Kristen* has "*a plurality of raised protuberances comprising pattern 24 (FIG. 2) are formed in a generally regular and waffle-like pattern on the inner surface of at least one of the panels to project outwardly therefrom towards the inner surface of the other panel... As further shown in FIG. 3, the protuberances may be solely formed on the inner surface of one panel with the inner surface of the other panel being flat and uninterrupted.*" (Col. 4, lines 15-24, emphasis original) FIGS. 5 and 7 also show a container having one panel with a pattern with the opposing panel being flat and uninterrupted.

Mainstone discloses a film extrusion apparatus including a quickly replaceable chill roll. *Mainstone* discloses that the chill roll is the heaviest and most expensive component of the apparatus and may be "chrome plated, matte finished, or provided with an embossed surface to be reproduced on the film." (Col. 1, lines 22-33) *Mainstone* further discloses an extrusion

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coating apparatus to apply a film 12 of thermoplastic material to a preformed web 13. (Col. 2, lines 64-68 and FIG. 1) *Mainstone* further discloses the apparatus could be used “as an extrusion laminator to bond the web 13 to a second web 18 which is guided by a suitable series of rolls to the nip of rolls 10 and 15 from above roll 10, as indicated in broken lines in FIG. 1, with the film 12 then being delivered to the nip between the webs 13 and 18.” (Col. 3, lines 9-16)

Araki discloses a resin composition suitable for a lamination process and laminated material suitable for forming bags for solid, liquid and gas.

Claim 1 has been amended to recite a method for forming a fluid container comprising: (1) providing a first non-molten polymeric sheet of material; (2) providing a second non-molten polymeric sheet of material; (3) positioning the first non-molten sheet or the second non-molten sheet to overlap at least a portion of the other sheet to define an interference zone; (4) directing a first molten polymeric material into the interference zone to adhere the first non-molten sheet to the second non-molten sheet to form the layered structure; (4) texturing a surface of the first non-molten sheet or the second non-molten sheet utilizing a chill roll to form a pattern on the surface, the pattern being dimensioned to form fluid pathways on the surface to assist in removing fluid from the surface; (5) forming a container having opposed sidewalls from the layered structure, the opposed sidewalls having fluid contacting surfaces facing a chamber of the container and having the fluid pathways positioned on the fluid contacting surfaces of each of the opposed sidewalls, and (6) providing an access member fixedly attached to one of the sidewalls for providing fluid access to the chamber.

Claim 27 differs from claim 1 in reciting the step of “forming a container having a chamber defined by opposed sidewalls having one of the opposed sidewalls formed from the layered structure and having the fluid pathways positioned facing the chamber; and providing an access member fixedly attached to a planar surface of one of the sidewalls for providing fluid access to the chamber.”

Claim 61, added by this Amendment recites the step of “forming a container having opposed sidewalls sealed along peripheral edges to define a fluid tight chamber, and at least one sidewall formed from the multiple layer film, the at least one sidewall having a fluid contacting

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surface facing the chamber of the container and having the fluid pathways positioned on the fluid contacting surface, the container further having an access member fixedly attached to one of the opposed sidewalls for withdrawing fluid from the fluid tight chamber.”

Kristen teaches away from having an access member fixedly attached to a container sidewall. Instead, *Kristen* discloses an evacuation member that temporarily inserts within an opening of the pouch until air is evacuated from the chamber and then the evacuation member is removed and an end of the pouch is sealed to form a fluid tight container. Accordingly, the Examiner has failed to present a *prima facie* case of obviousness of the claims as amended herein, and, therefore, Applicants respectfully request a withdrawal of the rejection of claims 1, 3-6, 10-20, 22-27, 29, 30, 32-36, 38-41, 43, 48-54 and 56-60.

The Examiner has made additional rejection of claims in paragraphs 15-17 requiring *Kristen* as the primary reference. Because *Kristen* teaches away from an access member fixedly attached to a sidewall of a container, these rejections also fail to present a *prima facie* case of obviousness, and, therefore, applicants respectfully request a withdrawal of these rejections.

The claims as amended also are patentable over U.S. Patent Nos. 5,728,086 (*Niedospial*) and WO 01/36276 (U.S. equivalents 6,607,097 and 6,851,579) (*Savage*). *Niedospial* discloses a flexible container for containing and dispensing a liquid. (Col. 2, lines 55-59) The container is made from superimposed sheets of multilayered material of a laminated film. (Col. 4, lines 48-66) An inside wall of the container can be embossed with a pattern to reduce the amount of liquid drops adhering to the walls of the container. (Col. 6, lines 44-67) *Niedospial* teaches that “while the inside wall of both first sheet and the second sheet may be embossed, it was observed that the pouch functions better in terms of eliminating fluid hold up and preventing the superimposed walls from sticking together when only one inside wall of the first or second sheet is embossed.” (Col. 6, lines 63-67)

Claim 1 is patentable in view of *Niedospial* as claim 1 requires texturing on the fluid contacting surfaces of each sidewall of the container. *Niedospial* teaches away from texturing each sidewall when it states that embossing both sidewalls leads to problems with superimposed

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walls sticking together. Claims 3-8, 10-15 and 17-26 depend from claim 1, and, therefore, are patentable over *Niedospial* for the same reason that claim 1 is patentable.

Independent claim 27 is patentable in view of *Niedospial* at it requires an access member be attached to a planar surface of the container. *Niedospial* discloses an IV access port located at the center of a bottom portion of the container and is sealed between the first and second sidewalls. (Col. 5, lines 19-30) There is no motivation within *Niedospial* to move the IV access port to a planar surface of the container, and, therefore, claim 27 and claims 29, 30, and 32-60 which depend therefrom are patentable over *Niedospial*.

Independent claim 61 recites a method for forming a container including: (1) providing a multiple layer film formed in an extrusion lamination process wherein a first non-molten polymeric sheet of material is attached to a second non-molten polymeric sheet of material by directing a first molten polymeric material between the first non-molten sheet of material and the second non-molten sheet of material to form a layered structure and while attaching the first non-molten sheet of material to the second non-molten sheet of material texturing a surface of the first non-molten sheet or the second non-molten sheet utilizing a chill roll to form a pattern on the surface, the pattern being dimensioned to form fluid pathways on the surface to assist in removing fluid from the surface; and (2) forming a container having opposed sidewalls sealed along peripheral edges to define a fluid tight chamber, and at least one sidewall formed from the multiple layer film, the at least one sidewall having a fluid contacting surface facing the chamber of the container and having the fluid pathways positioned on the fluid contacting surface, the container further having an access member fixedly attached to one of the opposed sidewalls for withdrawing fluid from the fluid tight chamber. There is no disclosure in *Niedospial* of how to form its laminated sheets. Accordingly, claims 61-64 are patentable in view of *Niedospial*.

Savage (WO 01/36276) was published on May 25, 2001, and, therefore, is prior art under 35 U.S.C. 102 (a). *Savage* 6,607,097 first published on October 17, 2002 and claims priority to a provisional patent application filed on November 10, 1999. *Savage* 6,851,579, issued from a continuing application from the application that issued as the '097 Patent, and, therefore, we will assume it shares the same publication date as the '097 Patent. Because the first publication date of the '097 Patent was after the filing date of the present application, but claims priority to a

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patent application filed prior to the filing date of the present application, it is prior art under 35 U.S.C. 102 (e). In view of the third Declaration of Brent Anderson attached hereto averring to a conception date prior to November 10, 1999 and that he worked on this matter diligently thereafter, all three of these *Savage* references should be excluded as prior art by virtue of this Declaration.

Conclusion

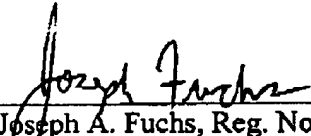
In view of the foregoing, Applicants submit the claims are in condition for allowance and respectfully request an early notice of the same.

Respectfully submitted,

EVEREST INTELLECTUAL PROPERTY LAW GROUP

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BY



Joseph A. Fuchs, Reg. No. 34,604
Attorneys for Applicant
P.O. Box 708
Northbrook, Illinois 60065
Phone: (847) 272-3400